



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Metropolitan Boston – Northeast Regional Office

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Commissioner

February 6, 2003

Mr. Michael A. Fitzgerald  
USGen New England, Inc. ("USGen-NE")  
Salem Harbor Station  
24 Fort Avenue  
Salem, MA 01970-5693

RE: **SALEM** – Metropolitan Boston /  
Northeast Region  
310 CMR 7.29 (6)(h)  
Power Plant Emission Standards  
Application No. MBR-01-729-001  
Transmittal No. W025160  
**AMENDED EMISSION CONTROL PLAN  
DISAPPROVAL**

Dear Mr. Fitzgerald:

On June 7, 2002, the Department approved an Emission Control Plan ("ECP") for the Salem Harbor Station submitted by USGen New England, Inc. ("the Company") pursuant to 310 CMR 7.29. The company has appealed the Department's Approval, and on June 14, 2002 submitted proposed amendments to the ECP pursuant to 310 CMR 7.29(6)(h). The Department issued a Proposed Amended ECP Draft Approval ("Amended ECP") to you on December 13, 2002, followed by a public hearing held on January 28, 2003. The public comment period for the Amended ECP closed on January 31, 2003. By this letter, the Department hereby Disapproves the Company's application for the Amended ECP.

The regulatory provision pursuant to which the Company seeks approval of its Amended ECP application, 310 CMR 7.29(6)(h), states:

**Modifications to an affected facility's Emission Control Plan**

Any person subject to 310 CMR 7.29 may propose amendments to the approved emission control plan. If the Department proposes to approve such amendments, or approve such amendments with conditions, then the Department will publish a notice of public comment on the draft approval, in accordance with M.G.L. c. 30A. . . .

Where the Amended ECP will delay compliance with the emission standards in 310 CMR 7.29 beyond the compliance dates approved in the original ECP, the Department may and

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should exercise reasonable discretion in determining whether to sanction an abandonment of the original ECP. One significant consideration for the Department in acting on proposed amendments to an ECP is whether any new information or other developments affect the feasibility of the original ECP as approved to comply with 310 CMR 7.29. If there is no new information bearing on the feasibility of the original plan, the Department may consider the fact that the company has an approved emission control plan that can feasibly meet the emissions standards of 310 CMR 7.29. The second consideration is whether overall, the Amended ECP is more environmentally protective than the original ECP.

With regard to the first consideration, no evidence has been provided to the Department that the original ECP is not feasible. With regard to the second consideration, the Department compared the environmental impact of the original ECP to that of proposed Amended ECP. A principal difference between the two is that the new plan would require compliance with 310 CMR 7.02 and thus, under 310 CMR 7.29(6)(c), would give the company an additional two years to meet the emissions standards in 310 CMR 7.29(5). As set out below, the additional two years would allow the Company's Salem Harbor Station to emit up to 32,000 additional tons of SO<sub>2</sub> and NO<sub>x</sub> emissions. Therefore, part of the Department's consideration is the significant additional emissions that would result from approval of the Amended ECP during the two-year delay in compliance.

Chapter 21A, Section 8, of the Massachusetts General Laws provides that the Department may consider those emissions in determining whether to approve the proposed Amended ECP:

In regulating or approving any pollution prevention, control or abatement plan, strategy, or technology, through any permit, license, regulation, guideline, plan approval or other departmental action affecting or prohibiting the emission, discharge, disposal, release, or threat of release of any hazardous substance to the environment, . . . the department may consider the potential effects of such plans, strategies and technologies on public health and safety and the environment that may arise through any environmental medium or route of exposure that is regulated by the department pursuant to any statute; and said department shall act to minimize and prevent damage or threat of damage to the environment.

The Department considers it appropriate to approve the Company's Amended ECP if there is a clear demonstration that on balance, taking into account the new plan's two-year delay in achieving compliance with the emissions standards, the Amended ECP would yield greater environmental benefits than the original ECP. The Company has not made such a demonstration. On the contrary, a review of the testimony provided during the public hearing and public comment period for the proposed Amended ECP indicates that there is a substantial public health benefit by implementing the original ECP over the Amended ECP.

Specifically, an analysis of the potential<sup>1</sup> sulfur dioxide (SO<sub>2</sub>) emissions from the Salem Harbor Station facility implementing the original ECP results in approximately 24,000 tons of SO<sub>2</sub> reduced with a compliance date of October 2004, rather than the Amended ECP compliance

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<sup>1</sup> As used in this document, "potential" emissions for SO<sub>2</sub> and NO<sub>x</sub> are taken from the Company's June 14, 2002 application for the Amended ECP.

date of October 2006. The Amended ECP submitted by the Company does not provide any additional, legally enforceable reductions of SO<sub>2</sub> beyond those stipulated within 310 CMR 7.29(5)(a)2. Therefore, approximately 24,000 tons of potential SO<sub>2</sub> emissions, beyond the tonnage allowed by the original ECP approval, would be emitted under the Amended ECP with no ability to ever recoup these emissions.

With respect to nitrogen oxides (NO<sub>x</sub>), a similar analysis was performed. Extending the compliance date of the original ECP would result in the emission of approximately 8,000 tons of additional NO<sub>x</sub>. The Company has proposed additional NO<sub>x</sub> emission limitations incorporated within the Amended ECP that would be effective after 2006; these additional NO<sub>x</sub> emission reductions would be approximately 10 percent greater than those contained in the original ECP. It is difficult to assess how long it would take to recoup the NO<sub>x</sub> emissions lost by not implementing the original ECP. However, based on historic capacity utilization of Salem Harbor Station, it could take more than twenty years to recoup the quantity of NO<sub>x</sub> emitted by not implementing the original ECP.

For these reasons, the Department has determined that the Amended ECP submittal should be disapproved based upon the increase in SO<sub>2</sub> and NO<sub>x</sub> emissions attributed to the delayed implementation/compliance date from October 2004 to October 2006.

The Company does not contend that its original ECP is infeasible and cannot achieve compliance with the emissions standards set out in 310 CMR 7.29(5)(a) 1 and 2. However, the Company has indicated that circumstances beyond its control may interfere with its ability to meet the deadlines set out in 310 CMR 7.29(6)(c)1. Like any other permittee, the Company has the right to present evidence regarding its ability to implement the original ECP in an appropriate submission to the Department. Or it may propose an amendment that increases the air quality benefits over the original ECP.

This Disapproval is an action of the Department. If you are aggrieved by this action, you may request an adjudicatory hearing. A request for a hearing must be made in writing and postmarked within twenty-one (21) days of the date of issuance of this Approval.

Under 310 CMR 1.01(6)(b), the request must state clearly and concisely the facts which are the grounds for the request, and the relief sought. Additionally, the request must state why the Approval is not consistent with applicable laws and regulations.

The hearing request along with a valid check payable to The Commonwealth of Massachusetts in the amount of one hundred dollars (\$100.00) must be mailed to:

The Commonwealth of Massachusetts  
Department of Environmental Protection  
P.O. Box 4062  
Boston, MA 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver as described below.

The filing fee is not required if the appellant is a city or town (or municipal agency) county, or district of the Commonwealth of Massachusetts, or a municipal housing authority.

The Department may waive the adjudicatory hearing filing fee for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file, together with the hearing request as provided above, an affidavit setting forth the facts believed to support the claim of undue financial hardship.

Should you have questions concerning this matter, please do not hesitate to contact Edward J. Braczyk in writing at 205A Lowell Street, Wilmington, MA 01887 or by telephone at (978) 661-7645.

Sincerely,

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Edward J. Braczyk  
Environmental Engineer

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James E. Belsky  
Regional Permit Chief  
Bureau of Waste Prevention

DATE: \_\_\_\_\_

cc: Stanley J. Usovicz, Jr., Mayor, City Hall, 93 Washington Street, Salem, MA 01970  
Fire Headquarters, 48 Lafayette Street, Salem, MA 01970  
Board of Health, 9 North Street, Salem, MA 01970  
Metropolitan Area Planning Council, 60 Temple Place, Boston, MA 02111  
USEPA - Region 1, Air Permitting Program: Steve Rapp, One Congress Street, Suite 1100  
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